

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

**ORDER**

Criminal No. 09-242 (MJD)

Mahamud Said Omar,

Defendant.

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John Docherty and Charles J. Kovats, Jr., Assistant United States Attorneys,  
Counsel for Plaintiff.

Andrew S. Birrell, Gaskins Bennett Birrell Schupp, LLP and Jon M.  
Hopeman, Felhaber Larson Fenlon & Vogt, PA, Counsel for Defendant.

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This matter is before the Court on limited remand to determine two issues, in light of the Defendant's request that counsel withdraw the notice of appeal in this case: 1) whether Defendant has a rational understanding of the proceedings and a rational and factual understanding of the proceedings against him; 2) whether Defendant is making a knowing and voluntary waiver of his statutory right to appeal.

**I. Background**

The Court held a hearing on June 12, 2013 during which the Court questioned the Defendant at length to determine the basis for his decision to withdraw his appeal. The Court also advised the Defendant of his rights and the consequences of not appealing his conviction or sentence. The Court further assured the Defendant that he would not be penalized for filing an appeal, in the event the matter was remanded to this Court following appeal. At the close of the hearing, the Defendant continued to assert his desire to withdraw his appeal, and to serve his sentence of twenty years.

Following that hearing, the Court ordered the Defendant to undergo an evaluation by Dr. Steven C. Norton to determine whether the Defendant has the present capacity to decide whether to proceed with, or waive, an appeal of his conviction and/or sentence. Dr. Norton completed said evaluation, and provided the Court his report dated July 18, 2013.

Dr. Norton reported that he met with the Defendant at the Anoka County Adult Detention Center, and thereafter conducted a thirty minute interview. Dr. Norton also conducted brief interviews with staff at the Anoka County Adult Detention Center and reviewed Defendant's current medical records. Dr. Norton also reviewed Orders from this Court dated June 19, 2013 and July 11, 2013, and a

psychiatric assessment report dated October 12, 2011 by Dr. J. Kroll, M.D.

Based on his interviews, and his review of the above records, Dr. Norton found no basis upon which to conclude that the Defendant was experiencing symptoms of major mental illness. He noted that the Defendant refused to answer any questions related to his criminal case or his views on an appeal of his sentence. He further noted that the Defendant was belligerent, angry, and possibly mildly depressed, but that he did not display any significant psychological concerns. Because Dr. Norton found no evidence that the Defendant suffers from a major mental disease or defect, he concluded that “an opinion that Mr. Omar is not competent to proceed (even without direct information on the issue) would be unwarranted.” (Norton Report at 4.)

The Court conducted a follow-up hearing on September 3, 2013 to discuss Dr. Norton’s report, and to determine whether the Defendant maintained his wish to withdraw the notice of appeal. At the hearing, the Court again allowed the Defendant to ask questions of the Court and to make any statement in support of his decision. The Defendant informed the Court that he still wished to withdraw his appeal.

## **II. Decision**

Based on the record, files and proceedings herein, the Court finds that the Defendant has a rational understanding of the proceedings and a rational and factual understanding of the proceedings against him, and that his waiver of appeal of his conviction and/or sentence is knowing and voluntary. In fact, the Court finds that the Defendant clearly understands his rights and that he knowingly and voluntarily is giving up his right to appeal.

The Court presided over the trial and sentencing in this matter and at no time has the Court had any concerns as to the Defendant's competence to understand these criminal proceedings. In addition, at all times throughout these proceedings, the Defendant has been represented by outstanding counsel.

With respect to the Defendant's decision to withdraw his notice of appeal, the record clearly demonstrates that the Defendant had the opportunity to discuss this decision, and its consequences, with his counsel and his family on numerous occasions. In addition, at the hearing on June 12, 2013, the Court advised the Defendant at length of his rights and the effect of not appealing his sentence and/or conviction. He was also given the opportunity to ask questions of this Court. Further, it should be noted that the Defendant has been provided

an interpreter at every hearing, and at every meeting with his attorneys.

Finally, the Defendant has been subjected to a mental competency evaluation by Dr. Steven Norton, who has provided the opinion that there is no basis to find that the Defendant is not competent to proceed.

The record as a whole demonstrates that the Defendant made the decision to withdraw his appeal knowingly and voluntarily, and with a rational and factual understanding of these proceedings.

Accordingly,

**IT IS HEREBY ORDERED** that Counsel for the Defendant withdraw the notice of appeal before the Eighth Circuit.

Date: September 3, 2013

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court